

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

CONSULTATIVE GENOMICS, LLC,
and ALPHA GENOMIX
LABORATORIES, INC.,

Plaintiffs,

v.

SHEA SPRUILL; HEALIX
PATHOLOGY, LLP; HEALIX
PATHOLOGY, LLC; and HEALIX
HOLDINGS, LLC,

Defendants.

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CV 122-120

O R D E R

Before the Court are Defendants' motion to dismiss (Doc. 13) and Plaintiffs' notice of dismissal (Doc. 22) and amended notice of dismissal (Doc. 23). Federal Rule of Civil Procedure 41(a)(1)(A)(i) allows a plaintiff to dismiss an action voluntarily without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Here, the Defendants have not filed an answer to Plaintiffs' complaint and have not filed a motion for summary judgment, but they have filed a motion to dismiss pursuant to Rule 12(b).

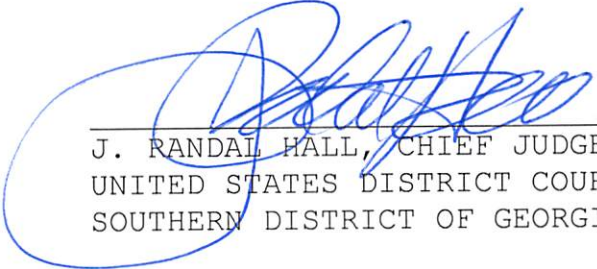
Although not addressed by the Eleventh Circuit, courts in this circuit and others have found that a defendant's filing of a

motion to dismiss under Rule 12(b) does not affect a plaintiff's right to voluntary dismiss the case. See Soldrich v. Colvin, No. 1:12-cv-4373, 2013 WL 5360758, at *1 (N.D. Ga. Sept. 25, 2013) (upon construing plaintiff's letters to be notices of dismissal, dismissing the case and denying Rule 12(b)(1) motion as moot); West v. Am. Fresh Foods, L.P., No. 7:10-cv-91, 2011 WL 63563, at *1 (M.D. Ga. Jan. 4, 2011) (dismissing action pursuant to plaintiff's notice of voluntary dismissal under Rule 41(a)(1)(A) and denying as moot Rule 12(b)(6) motion); accord Aamot v. Kassel, 1 F.3d 441, 444 (6th Cir. 1993) (affirming district court's dismissal of the action when the plaintiff filed a notice of dismissal after the defendant filed a Rule 12(b)(6) motion); Kilpatrick v. Texas & P.Ry. Co., 166 F.2d 788, 792 (2d Cir. 1948) (holding that filing a motion to dismiss for lack of personal jurisdiction before the plaintiff filed notice of dismissal did not preclude the plaintiff from voluntarily dismissing the case); Brown v. T-Ink, LLC, No. 07-CV-13111, 2007 WL 4098207, at *3 (E.D. Mich. Nov. 16, 2007) ("It is well-established that a plaintiff's right to a voluntary dismissal is not extinguished by the filing of a motion to dismiss under [Rule 12(b)], subject to the exception for Rule 12(b)(6) motions converted to motions for summary judgment.") (citation and quotations omitted).

Accordingly, the Court finds that in this case the requirements of Rule 41(a)(1)(A)(i) are met. **IT IS THEREFORE ORDERED** that Defendants' motion to dismiss (Doc. 13) is **DENIED AS**

MOOT and this matter is **DISMISSED WITHOUT PREJUDICE** pursuant to Plaintiffs' amended notice of dismissal (Doc. 23). The Clerk **SHALL TERMINATE** all deadlines and motions and **CLOSE** this case. Each party shall bear their own costs and attorneys' fees.

ORDER ENTERED at Augusta, Georgia, this 13th day of March, 2023.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA